

AMENDED IN ASSEMBLY MAY 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2315

Introduced by Assembly Member Mazzoni

February 24, 2000

An act to add Section 1203.15 to the Penal Code, and to add Chapter 6 (commencing with Section 16575) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to children of incarcerated parents.

LEGISLATIVE COUNSEL'S DIGEST

AB 2315, as amended, Mazzoni. Children of incarcerated parents.

Existing law provides various services for the care of children, including foster care placement, child welfare services, services for children who are exposed to alcohol or drugs or who are HIV positive.

This bill would require the Attorney General and the Secretary of the Health and Human Services Agency to convene a study group within 2 months of enactment of this act to include representatives of state and local law enforcement, child welfare and mental health agencies, and the courts for the purpose of developing a model protocol that addresses how best to ensure the temporary and long-term safety, security, and care of children at the time of their parent's arrest. The bill would require the arresting officer to inquire at the time of an arrest whether the arrested individual has dependent children and where they are

located. ~~This~~ *In any case in which the arresting officer suspects that the children of an arrestee may not have any provision for care and supervision, this* information would be required to be shared with child protective service agencies and the courts. By increasing the duties of local officials, this bill would impose a state-mandated local program.

~~The bill would also require a court at the time of entry of a plea of guilty or nolo contendere or upon the rendering of a verdict of guilty of any person over 18 years of age if the defendant has children. If the court determines that the defendant has children, the court would be required to refer the case to the probation department to determine what arrangements have been made for those children. The probation department would also be required to make recommendations to the court concerning the children. The~~ *the report filed by the probation officer with the court prior to sentencing to include a discussion of whether or not a defendant over 18 years of age has children, and what arrangements exist for the care of the children if the defendant is to be incarcerated. The court would be required to inquire at the time of sentencing a defendant to incarceration if there is an appropriate arrangement for child care. If there is not an appropriate arrangement the court* would be authorized to refer the matter of the children's care and custody to the family or probate court, or to the child protective services agency for assessment, review, and appropriate disposition. By increasing the duties of local officials, this bill would impose a state-mandated local program.

Additionally, the bill would require the Secretary of the Health and Human Services Agency and the Secretary of the Adult and Youth Correctional Agency to convene the Advisory Committee on the Children of Incarcerated Parents. The committee would be comprised of representatives from the Department of Education, the Judicial Council, visitor center providers, researchers, and local law enforcement and child welfare agencies. The committee would be required to develop recommendations on how to provide and target state and local services to children of incarcerated parents and



caregivers. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203.15 is added to the Penal
2 Code, to read:
3 1203.15. (a) ~~The court shall inquire at the time of~~
4 ~~entry of a plea of guilty or nolo contendere or at the time~~
5 ~~a verdict of guilty is rendered of any defendant over 18~~
6 ~~years of age if the defendant has one or more children. If~~
7 ~~the court determines that the defendant has children, the~~
8 ~~court shall refer the case to the probation department to~~
9 ~~determine what arrangements have been made for the~~
10 ~~care of the children if the parent is incarcerated. The~~
11 ~~probation report filed with the court shall specify the~~
12 ~~arrangements that have been made for the minor~~
13 ~~children and, if appropriate, make recommendations to~~
14 ~~the court concerning the children. The~~ *The report filed*
15 *by the probation officer with the court prior to*
16 *sentencing pursuant to Section 1203 shall include a*
17 *discussion of whether or not a defendant over 18 years of*
18 *age has children, and what arrangements exist for the*
19 *care of a defendant's children if the defendant is to be*
20 *incarcerated. When a sentence includes incarceration,*
21 *the court shall inquire at the time of sentencing of any*
22 *defendant who has children whether there is an*

1 *appropriate arrangement to provide care for the*
2 *defendant's children if incarcerated. If the court believes*
3 *that an adequate care arrangement for the defendant's*
4 *children does not exist, the court may directly refer the*
5 matter of the children's care and custody to the family or
6 probate court for appropriate orders, or to the County
7 Child Protective Services Agency for assessment, review,
8 and appropriate disposition.

9 (b) The Judicial Council shall adopt rules and forms to
10 implement this section.

11 SEC. 2. Chapter 6 (commencing with Section 16575)
12 is added to Part 4 of Division 9 of the Welfare and
13 Institutions Code, to read:

14
15 CHAPTER 6. CHILDREN OF INCARCERATED PARENTS
16

17 16575. This article shall be known and may be cited as
18 the Children of Incarcerated Parents Act of 2000.

19 16576. The Legislature declares as follows:

20 (a) An estimated 80 percent of the 11,600 women in
21 state youth and adult correctional facilities, and the
22 approximately 10,000 women in county jails, are parents.
23 Most of these women are single parents who have an
24 average of two children. Approximately three-fourths of
25 these women had custody of their children at the time of
26 their arrest.

27 (b) About one in five children are present at the time
28 of their parent's arrest, and many of these children are
29 between the ages of three and six years old.

30 (c) The children of incarcerated parents may suffer
31 from separation anxiety, fear, and guilt, and may act out
32 by withdrawing or by aggressive behavior. Repeated
33 separations due to their parent's recidivism may
34 aggravate these problems.

35 (d) The children of incarcerated parents are at risk for
36 poor outcomes in school, mental health and social
37 problems, and juvenile delinquency. There is increasing
38 evidence of intergenerational incarceration.

39 (e) Most jurisdictions do not request or collect family
40 information from arrested persons, nor do they have

1 protocols in place to define official roles and
2 responsibilities for addressing the needs of the children of
3 prisoners at the time of arrest or at sentencing.

4 16577. (a) The Attorney General and the Secretary
5 of the Health and Human Services Agency shall jointly
6 convene a study group within two months of enactment
7 of this chapter, to include representatives of state and
8 local law enforcement, child welfare and mental health
9 agencies, and the courts. The study group shall develop
10 a model protocol within six months of its first meeting that
11 addresses how best to ensure the temporary and
12 long-term safety, security, and care of children at the time
13 of their parent's arrest. This would include having the
14 arresting officer inquire at the time of arrest whether the
15 arrestees have dependent children and where those
16 children are located. ~~Information~~ *In any case in which the*
17 *arresting officer suspects that the children of an arrestee*
18 *may not have any provision for care and supervision,*
19 *information* about the children and their whereabouts
20 shall be shared with child protective service agencies and
21 the courts as soon as possible, in a manner specified by the
22 model protocol.

23 (b) The study group shall disseminate the model
24 protocol to county boards of supervisors and city councils,
25 and to local law enforcement, judicial, child welfare, and
26 mental health agencies.

27 (c) Upon enactment of this chapter, counties shall
28 ensure that they have in place standard operating
29 procedures for identifying, locating, and providing
30 appropriate arrangements to ensure the safety, security,
31 and well-being of the minor child of an arrestee. Upon
32 receiving the model protocol developed by the state
33 study group, counties shall again review the standard
34 operating procedures and incorporate any elements of
35 the model protocol that may be ~~omitted~~ *missing* from
36 those standard operating procedures.

37 16578. (a) The Secretary of the Health and Human
38 Services Agency and the Secretary of the Adult and Youth
39 Correctional Agency shall jointly convene the Advisory
40 Committee on the Children of Incarcerated Parents. The

1 advisory committee shall include agency officials and
2 representatives from the Department of Education, the
3 Judicial Council, visitor center providers, researchers,
4 and local law enforcement and child welfare agencies, as
5 ~~suggested~~ *appointed* by the secretaries.

6 (b) The advisory committee shall develop
7 recommendations within six months on how to best
8 provide and target state and local services to the children
9 of incarcerated parents and caregivers. The committee
10 shall suggest how to develop a database that will track the
11 needs and outcomes of these children while ensuring
12 confidentiality of the data. The committee shall also
13 consider how to facilitate visitation with the incarcerated
14 parent when in the best interest of the child.

15 SEC. 3. Notwithstanding Section 17610 of the
16 Government Code, if the Commission on State Mandates
17 determines that this act contains costs mandated by the
18 state, reimbursement to local agencies and school
19 districts for those costs shall be made pursuant to Part 7
20 (commencing with Section 17500) of Division 4 of Title
21 2 of the Government Code. If the statewide cost of the
22 claim for reimbursement does not exceed one million
23 dollars (\$1,000,000), reimbursement shall be made from
24 the State Mandates Claims Fund.

